IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9764 of 2005
Date of decision:15.11.2006

M/s Stella Industries (P) Limited

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Mohan Jain, Advocate, for the petitioner.
Ms. Ritu Bahri, DAG,Haryana.

JUDGMENT:

This petition seeks quashing of order dated 23.2.2005, Annexure P.5, passed by the Lower Level Screening Committee, withdrawing Eligibility Certificate granted to the petitioner under Rule 28-A of the Haryana General Sales Tax Rules, 1975 (for short, 'the Rules'), appellate order dated 2.12.2005, Annexure P.12 passed by Higher Level Screening Committee rejecting the appeal of the petitioner against order, Annexure P.5, consequential proceedings for recovery vide notice dated 4.5.2006, Annexure P.6 and recovery summons dated 1.6.2005, Annexure P.7, seeking to recover a sum of Rs.1,70,79,412/-.

Case of the petitioner is that it applied for exemption from sales tax under Rule 28-A of the Rules and the same was granted vide eligibility certificate dated 21.2.2003, Annexure P.3 for the period from 28.3.1998 to 27.3.2005 subject to the limit of the amount specified therein. After the petitioner had already availed of the benefit, it came to light that the petitioner was not eligible to the exemption as its unit was in the negative

list being Ethyl Alcohol based industry for which exemption could not be granted. On 29.1.2002, proceedings for withdrawal of eligibility certificate were initiated and decision to withdraw eligibility certificate was taken on 16.12.2004. Case of the petitioner was that its unit was not using ethyl alcohol but using denatured spirit which was different. This plea was rejected having regard to the report of the technical expert that chemical formula of ethyl/Ethanol was same as that of rectified spirit which was also called industrial alcohol. Reliance was also placed on judgment of Karnataka High Court in **M/s. Yaka International v. The State of Karnataka and others**, ILR 1996 Karnataka 2405. Report has been annexed as Annexure R.6/III.

Learned counsel for the petitioner submitted that once eligibility certificate was granted, the same cannot be withdrawn or cancelled on any ground except those enumerated under Rule 28A(8) of the Rules and that too can be done during the currency of the eligibility certificate and not after the expiry thereof.

Learned counsel for the respondents submitted that since the petitioner was not eligible for the exemption, grant of exemption being void ab-initio; the illegality could not be permitted to be perpetuated merely on the ground that the petitioner had already availed of the benefit or that the currency of the Eligibility Certificate had expired.

We have heard learned counsel for the parties and perused the record.

The question for consideration is whether eligibility certificate granted illegally by mistake could not be withdrawn merely because the benefit thereunder had been availed of or that currency thereof had expired.

Before proceeding further, it may be necessary to extract the relevant provisions of the Rules dealing with the issue:-

> "28A(5)(a) Every Eligible Industrial Unit which is desirous of availing benefit under this rule shall make an application in Form S.T.70 in triplicate alongwith attested copies of the documents mentioned therein to the General Manager, District Industries Centre within 90 days of the date of its going into commercial production or the date of coming into force of this rule whichever is later. No application shall be

entertained if not preferred within time. An application with incomplete or incorrect particulars including the documents required to be attached therewith shall be deemed as having not been made if the applicant fails to complete it on an opportunity afforded to him in this behalf.

(b) Applications from small scale units will be considered by the Lower Level Screening Committee and those from Medium/Large scale units by the Higher Level Screening Committee.

( c ) The General Manager, District Industries Centre shall immediately forward one copy of the application and documents on receipt to the Deputy Excise and Taxation Commissioner incharge of the District who will send his comments within a period of 21 days. In case of medium/large scale industry, a copy of the comments will also be sent by him to the Commissioner.

(d) The General Manager, District Industries Centre will, within 30 days of receipt of the application from the small scale industry, place the proposal before the Lower Level Screening Committee with his report and recommendations alongwith comments, if any of the Deputy Excise and Taxation Commissioner concerned for its decision.

(e) The General Manager, District Industries Centre will, within 30 days of receipt of the application from the medium/large scale industry forward his report and recommendations alongwith the comments if any, of the Deputy Excise and Taxation Commissioner to the Additional Director of Industries who will place his proposal before the High Level Screening Committee within a further period of 15 days for its decision.

(f) An appeal from the decision of the Lower Level Screening Committee shall lie to the higher Level Screening Committee, if preferred within 30 days of the communication of the decision. The decision of the Higher Level Screening Committee in such appeal shall be final.

(g) An appeal from the original decision of the Higher Level Screening Committee shall lie to the Secretary Industries, if preferred within 30 days of the communication of the decision. The decision

of the Secretary Industries shall be final.

(h) The eligibility certificate will be issued by the General Manager, District Industries Centre in cases approved by the Lower Level Screening Committee and by the Director of Industries and any officer nominated by him not below the rank of Additional Director in cases approved by the Higher Level Screening Committee normally within a period of 45 days from the date of receipt of the application in the office of the General Manager, District Industries Centre. The certificate shall be valid from the date of commercial production or from the date of issue of entitlement/exemption certificate as the case may be for a period as laid down under sub rule (4) unless cancelled or withdrawn. A copy of the eligibility certificate shall also be sent to the Deputy Excise and taxation Commissioner concerned.

(i) In the case of expanded/diversified units, the installed capacity before and after expansion or diversification shall be certified by the Director of Industries, Haryana, at the time of issue of eligibility certificate."

"8)(a) The eligibility certificate granted to an industrial unit shall be liable to be withdrawn at any time during its currency by the appropriate screening committee, in the following circumstances -

(i) if it is discovered that it has been obtained by fraud, deceit, misrepresentation, mis-statement or concealment of material facts;

(ii) discontinuance of its business by the unit or closing down of its business for a continuous period exceeding six months except in case of fire, flood and other natural calamities, riots, strike or lock out which in the opinion of the committee concerned is beyond the control of the unit;

(iii) disposal or transfer by the unit of any of its fixed assets adversely affecting its manufacturing or production capacity:

Provided that no order of withdrawal of the

> eligibility certificate shall be made without affording a reasonable opportunity of being heard to the affected unit.
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> (b) When the eligibility certificate is withdrawn, the exemption/entitlement certificate shall be deemed to have been withdrawn from the Ist day of its validity and the unit shall be liable to payment of tax, interest or penalty under the Act as if no entitlement certificate had ever been granted to it."

A perusal of Rule 28A(5) of the Rules shows that complete procedure has been laid down for filing and processing of the application for issue of eligibility certificate to claim the benefit of exemption from/deferment of payment of tax. An application is required to be made on Form ST 70 within 90 days of the date of the commercial production to the General Manager, District Industries Centre. A copy of the application is sent to the Deputy excise and Taxation Commissioner for his comments in the case of applications to be considered by the Lower Level Screening Committee i.e., small scale industrial units and for the applications to be considered by the Higher Level Screening Committee i.e. medium/large scale industries, copy of the application is sent to the Commissioner for comments. It is only after the receipt of the report of the competent officers that the matter is put up before the appropriate screening committee for decision and, thereafter, eligibility certificate is granted. It is not a matter of routine only that the eligibility certificate is granted to a unit merely on what it claims.

Sub Rule 8 of Rule 28A of the Rules enumerates various conditions on the happening of which appropriate screening committee is entitled to withdraw an eligibility certificate already granted, at any time during its currency. However, before passing an order for withdrawal of eligibility certificate, an opportunity of hearing is required to be given to the affected unit.

It remained undisputed before us that the eligibility certificate was granted to the petitioner on consideration of his application by the Lower Level Screening Committee, being the competent authority. The relevant terms of the eligibility certificate are as under:-

> "10. period of Eligibility from 28.3.1998 to 27.3.2005 (Seven Years) subject to ceiling of Rs.1,63,66,999/- (Rs. One Crore sixty three lacs Sixty Six thousand Nine hundred Ninety Nine only (Lac)."
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> xx xx xx xx
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> "4) The eligibility certificate shall cease to be operative with effect from the date the unit reaches the ceiling of deferred/exempted amount of tax prescribed in the eligible certificate."

A perusal of the conditions of eligibility certificate granted to the petitioner shows that the maximum amount of benefit available to the petitioner was fixed and also maximum period during which the benefit could be availed of that is Rs.1,63,66,999/- for the period from 28.3.1998 to 27.3.2005 respectively. It is further evident from condition No.4 of the eligibility certificate, as extracted above, that the eligibility certificate shall cease to be operative with effect from the date the unit reaches the ceiling of deferred/exempted amount of tax prescribed in the eligibility certificate, meaning thereby, the eligibility certificate will become inoperative on two conditions, firstly, when the maximum period provided for its validity, has expired or the maximum amount of benefit available thereunder has been availed of, whichever is earlier. In the present case, it is not in dispute that the benefit available to the petitioner was availed of by it by the year ending March 31, 2002. Meaning thereby, in terms of the conditions of eligibility certificate, the same ceased to be operative thereafter. Once it is so, no action possibly could be taken under Sub Rule 8 of Rule 28A of the Rules, which enables the withdrawal of an eligibility certificate at any time during its currency. Once the currency of the eligibility certificate is over, power under Sub rule 8 of Rule 28A of the Rules cannot be exercised on the ground it is sought to be exercised by the respondents that is mis-statement or concealment of facts by the petitioner. The plea of the respondents that proceedings for withdrawal of eligibility certificate had been initiated during the currency of the same, have just, to be noticed and rejected, being without any merit. Plan language of Sub Rule 8 of Rule 28A of the Rules provides that it is the withdrawal of the eligibility certificate, which has to take place during its currency and not that the process of withdrawal is to

start during that period. Any order passed for withdrawal of eligibility certificate after its currency is over, would be clearly beyond the enabling provisions of Sub Rule 8 of Rule 28A of the Rules.

For the reasons recorded above, the writ petition is allowed, impugned order dated February 23, 2005, Annexure P.5 passed by Lower Level Screening Committee withdrawing eligibility certificate, order dated December 2, 2005, Annexure P.12 passed by the Higher Level Screening Committee on appeal and consequential proceedings for recovery of the amount, are quashed.

The writ petition is disposed of in the manner indicated above.

(Adarsh Kumar Goel)
Judge

November 15, 2006 (Rajesh Bindal)
'gs' Judge